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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1770 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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BAVAJI ISHWARDAS BAVANDAS

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 1770 of 2001
MR AZIZ AN ALVI for Petitioner No. 1
NOTICE SERVED for Petitioner No. 1
MR HL JANI AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/08/2001

ORAL JUDGEMENT

#. Heard Mr.Aziz N. Alvi, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing on behalf of the respondents State. In the present petition, the order of detention dated 7th

September, 2000 has been challenged by the petitioner under Article 226 of the Constitution of India. The order of detention has been passed by the District Magistrate, Bhavnagar on 7th September, 2000 under Section 3[2] of the PASA Act. The present petitioner has been detained in District Jail Junagadh as class-II detenu. The grounds of detention are communicated and supplied to the petitioner under Section 9[1] of the PASA Act. According to the grounds of detention, in all five offences have been registered against the present petitioner, wherein last offence is registered on 18th June, 2000. Three statements of the secret witnesses were recorded on 6th August, 2000 and the same has been verified by the DySP, Bhavnagar on 7th August, 2000 and therefore, endorsement has been made by the detaining authority on the statement on 30th August, 2000. There were no unregistered offence noted by the detaining authority on the basis of the statements of the secret witnesses. The affidavit in reply has been filed by the respondents - detaining authority.

#. Learned advocate Mr.Alvi appearing on behalf of the petitioner has challenged the detention order on various grounds. However, according to him, one or two contentions are enough to vitiate the order of detention. He also submitted that there is delay in passing the detention order from the date of last registered offence dated 18th June, 2000 and during this intervening period, there was no unregistered offence noted by the detaining authority. Therefore, he submitted that more than two months have been passed in passing the detention order from the date of last registered offence dated 18th June, 2000. He also relied upon the decision of this Court in reported decision 1997 [1] GLH 381. The second contention which has been raised by the learned advocate Mr.Alvi that the detaining authority has actually not verified the genuineness of the statements made by the secret witnesses but merely endorsing the statements by word 'verified', is not enough and the same cannot justify the subjective satisfaction of the detaining authority and therefore, the order of detention is required to be quashed and set aside. In support of his submission, he relied upon the decision reported in 1996 [1] GLH 300.

#. Mr.H.L.Jani, learned AGP appearing on behalf of the respondents - State has submitted that a detailed reply has been filed by the detaining authority. Looking to the grounds of detention, there were compelling circumstances with the detaining authority to pass the detention order, otherwise, the activities which were

carried out by the petitioner, would have adversely affected maintenance of public order. He also submitted that looking to the facts and circumstances and material which are on record, the order of detention is legal and valid which does not require any interference by this Court.

#. I have considered the submission of both the learned advocates. It is necessary to note that the detaining authority has not verified the genuineness of the statements made by the secret witnesses. It is well established that while exercising the powers under Section 9[2] of the Act, the detaining authority must have reached on subjective satisfaction and for establishing such subjective satisfaction, the detaining authority must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to have subjective satisfaction. In the instant case, in the aforesaid background of the statements of each of the witnesses, if we turn to the end of the statements, in order to arrive at subject satisfaction except one word 'verified', no other endorsement is used by the DySP, which apparently seems to have been put pursuant to the instructions received from the detaining authority for verifying. There is no other material except the word 'verified' to ascertain and satisfy himself as to the apprehension expressed. There is nothing either in the grounds of detention along with its compilation or in the contemporaneous record from the office of the detaining authority. Therefore the view taken by this Court in reported decision 1996 [1] GLH pg.300, relevant observations in para-2 are quoted as under :-

"2. Mr.Satish R. Patel, learned counsel appearing for the detenu has assailed the genuineness of the claim of privilege made by the detaining authority under Section 9[2] of the said Act vis-a-vis the statements of witnesses. He has submitted that in fact the witnesses in their statements have said that their addresses, names, place of business, etc. should not be disclosed to the detenu as they were apprehending danger to their life and property. Such apprehension or fear expressed by the witnesses in their statements was before the authority, who has recorded the statements. The detaining authority has not recorded the statements. The detaining authority itself was required to be subjectively satisfied that the claim of privilege which it was seeking to make was

justified. Therefore, it has directed the Superintendent of Police to satisfy as to whether the fear or apprehension expressed by the witnesses was genuine or not and the Superintendent of Police was in his turn required to call such witnesses and to verify and to record as to whether apprehension or fear expressed by such witnesses in their statements was genuine or not. Unfortunately, below every statement, the Superintendent of Police has written one word namely 'verified' and based on such endorsement made by the Superintendent of Police, the detaining authority has claimed privilege. It is submitted before this Court that such an exercise is merely an eye wash and there is not genuine independent material before the detaining authority to claim the privilege. In this connection, reliance is placed upon the decision of the Division Bench of this Court in the case of Koli Ashwin Vs. state of Gujarat in Special Criminal Application No.1812 / 1993 dated 12th Sept, 1994, where N.J.Pandya, J. speaking for the Division Bench has made following pertinent observations :

"However, as is well established, for exercising the power under Section 9[2] what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word 'verified' used by the DySP who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material.

About what has been verified, what were the instructions and to what extent the verifying authority himself was satisfied about the apprehension expressed, there is nothing either in the grounds of detention along with its compilation or in the contemporaneous record from the office of the detaining authority."

#. So far as the second contention is concerned, there is delay in passing the detention order from the last registered offence dated 18th June, 2000 and the order of detention is dated 7th September, 2000. There appears no explanation given by the detaining authority why immediate action has not been taken under the Act. Therefore, the view taken by this Court in reported decision 1997 [1] GLH 381 is quite significant with the facts of the present case. The relevant observations in para-21 are reiterated as under :-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 [2] Suppl. SCC 61."

#. In view of above observations made by this Court and looking to the facts and circumstances of the present case, when the detaining authority has not verified the genuineness of the statements made by the secret witnesses and in spite of this fact claimed privilege under Section 9[2] of the Act without considering the general background, past history and seriousness of the offence of the detenu and other relevant factors, the privilege which has been claimed under Section 9[2] of the Act, is not genuine and thus, the subjective satisfaction cannot be established merely from the endorsement made at the bottom of the statements of the secret witnesses by the detaining authority. Therefore,

according to my opinion, there is delay in passing the detention order which remained unexplained and with the result, the continued detention of the detenu stands vitiated.

#. In the result, the present petition is allowed. The order of detention dated 7th September, 2000 passed by the District Magistrate, Bhavnagar is hereby quashed and set aside. The petitioner - detenu - Bavaji Ishwardas Bavandas who has been detained at District Jail Junagadh as Class - II is ordered to be released immediately he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 9-8-2001 [H.K.Rathod, J.]

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